

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

**1:07-CR-00575-KMK**

-against-

**NOTICE OF MOTION**  
**FOR BOND**

CARLOS ALBERTO GUTIERREZ,

Defendant.  
-----

TO: Honorable Kenneth M. Karas  
Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street

AUSA Jessica Ann Masella  
Assistant United States Attorney  
Office of the United States Attorney  
Southern District of New York

Please take notice that on August 9, 2007 at 4:30 AM, or as soon thereafter as counsel may be heard, at the United States District Court, Southern District of New York, 500 Pearl Street, New York, New York 10007, before Honorable Kenneth M. Karas, counsel for defendant, Ismael Gonzalez, Esq., will move, pursuant to 18 U.S.C. §§ 3145(b) and 3145(c) for an Order to have defendant, Carlos Alberto Gutierrez, released on a personal recognizance bond in the amount of \$350,000.00, to be secured by a residential property with an immediate cash value of \$248,734.00, \$10,000 cash and the combined equity of the (4) below named signatories.

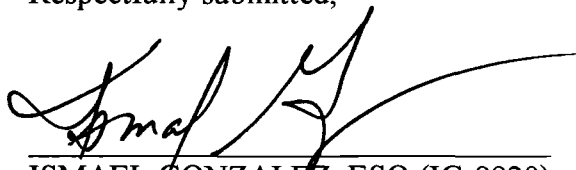
In the alternative, if this Court denies defendant release on his own recognizance or upon payment of a reasonable bail, defendant moves, pursuant to 18 U.S.C §3145(c), 21 U.S.C.

§3731, and 18 U.S.C. §1291 for his release upon conditions which would reasonably assure the presence of defendant at trial if he is released.

This motion is based on the within Notice of Motion, the Supporting Affirmation of Attorney Ismael Gonzalez, attached exhibits, and all the papers and records filed in this proceeding.

Dated: New York, New York  
August 8, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ismael Gonzalez', is written over a horizontal line.

ISMAEL GONZALEZ, ESQ.(IG-9920)  
ISMAEL GONZALEZ & ASSOCIATES  
53 West 36<sup>th</sup> Street, Suite 605  
New York, New York 10018  
(212) 465-1500

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----  
UNITED STATES OF AMERICA

**1:07-CR-00575-KMK**

-against-

CARLOS ALBERTO GUTIERREZ,

**AFFIRMATION AND**  
**MEMORANDUM OF LAW**  
**IN SUPPORT OF BOND**

Defendant.  
-----

I, ISMAEL GONZALEZ, ESQ., attorney for defendant, CARLOS ALBERTO GUTIERREZ, affirm as follows:

I am the attorney representing CARLOS ALBERTO GUTIERREZ the defendant in this case. I submit this Affirmation in support of his motion for release on his own recognizance, or in the alternative, for release upon the posting of a personal recognizance bond in the amount of \$350,000.00, to be secured by a residential property with an immediate cash value of \$248,734.00, \$10,000 cash and the combined equity of the (4) below named signatories. The defendant's bond in this First application will be secured by the property located at 307 First Place, Bogota, NJ 07603; \$10,000.00 cash and ten (4) signatories, an electronic bracelet, home-detention in New Jersey.

**BACKGROUND OF CASE**

Mr. Gutierrez is charged with conspiracy to distribute narcotics, in violation of the laws of the United States, in violation of Section 846 of Title 21, United States Code.

**MEMORANDUM OF LAW**

**RELEVANT STATUTE 18 USC §3142(g)**

The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning (1) The nature and circumstances of the offense ... (2) the weight of the evidence ... (3) the history and characteristics of the person ... (4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release ... *18 U.S.C. §3142(g)*.

While the charge is a serious one, Defendant has not been charged in this indictment with any acts or threats of violence, and defendant has an extensive and deep-laid network of family and friends, all United States citizens or lawful permanent residents with a history of steady employment and only one prior arrest.

Moreover, Defendant is willing to abide by any reasonable conditions set by the Court, *e.g.*, surrender of passport, electronic monitoring, close supervision by Pre-Trial Services, etc.

Mr. Gutierrez is not at high risk of flight because. This is Mr. Gutierrez first and only arrest. Moreover, Mr. Gutierrez has been cooperative with the government since his arrest.

Furthermore, Mr. Gutierrez has at all times been gainfully employed. He has always filed his taxes. Mr. Gutierrez is a model citizen despite his alleged involvement in conspiring to distribute a controlled substance. Mr. Gutierrez is well-liked and respected by his family, friends and neighbors. Mr. Gutierrez is employed at Dapa Corporation, PO box 216, Bogota, New Jersey 07603. Attached are Mr. Gutierrez's individual income tax returns for the years 2000 through 2005. **(See Exhibit #5)**

**PROPOSED SURETORS**

For these reasons, Defendant proposes that he be permitted to post and sign a recognizance bond in the amount of Three Hundred and Fifty Thousand Dollars (\$350,000.00), to be co-signed by four financially responsible individuals including Defendant, as a condition of Defendant's release pursuant to 18 USC §3142(f). The proposed suretors, Defendant's family members and friends have surrendered their personal documents so that Defendant may spend his remaining days prior to plea or trial, surrounded by loved ones.

Mr. Gutierrez is offering a recognizance bond in the amount of \$350,000.00 to be secured by one residential property, \$10,000 in cash and the equity held by the below-named suretors. The property is a one family home located at 307 First Place, Bogota, New Jersey 07306, owned by Luz Gutierrez, sister of Defendant. **(See Comparative Market Analysis; Mortgage Statements and Title and Deed marked as Exhibit #1).** The property is valued at \$563,706.00. Ms. Gutierrez's equity in the home is \$248,734.00. **(See Exhibit 1)** Ms. Gutierrez will also sign as a suretor of the bond. Ms. Gutierrez is a Lawful Permanent Resident of the United States citizen. She is employed by Housing Authority of Bergen County. **(See Joint Income Tax Returns and 1099 and W-2's attached as Exhibit #2)** Also See enclosed New Jersey State Driver's license, Alien Resident Card and Earnings Statements of Luz Gutierrez marked as Exhibit #3)

Ms. Gutierrez's husband, Jose G. Ramirez will also co-sign the bond on Mr. Gutierrez's behalf. He submits his and his wife's joint income tax returns for the years 2004 through 2006 in the amount of \$23,267 **(See Exhibit #2).**

We also propose as a co-suretor, Jose I. Gutierrez, brother of Defendant Carlos Gutierrez. Jose Gutierrez resides at 226 Main Street, 3<sup>rd</sup> Floor, Hackensack, New Jersey 07601. Mr. Gutierrez is a United States Citizen. He is employed as a commercial driver for Farmland Dairies, LLC. Mr. Gutierrez' salary is over \$40,000.00 per year. **(See NJ State Commercial Driver's License, Birth Certificate and Earnings Statements attached as Exhibit#4).**

We finally propose as a co-suretor, the Defendant, Carlos Alberto Gutierrez. Defendant, prior to his arrest and detention was employed by Dapa Corporation in Bogota, New Jersey. Defendant was earning \$28,500 per year. **(See Exhibit#5)**

**DEFENDANT'S PROPOSED SURETORS ARE BOTH FINANCIALLY RESPONSIBLE AND EXERCISE MORAL SUASION TO ENSURE DEFENDANT'S PRESENCE AT TRIAL**

A defendant seeking bail must show that proposed suretors exercise moral suasion to ensure defendant's presence at trial. *18 USCS §3142(c)(1)(B)(xii)*. Appropriate factors to consider when weighing whether proposed suretor for bail bond exercises moral suasion over defendant vary from case to case, but may include 1) strength of tie between suretor and defendant, meaning family or close friend, close or estranged, 2) defendant's roots in the community, and 3) regularity of contact between suretor and defendant. *18 USCA §3142(g)(3)(A)*. The number of bail suretors to be required is within discretion of the court, and should be tailored to meet same goals as financial and moral suasion conditions, namely ensuring defendant's presence at trial without imposing undue burden. *18 USCA §3142(g)(3)(A)*.

All of the suretors offered by defendant's counsel have close ties with the defendant. All of the suretors are close family members who have daily contact with the Defendant.

Defendant's sister, Luz Gutierrez not only co-signs the bond, but she has placed her home as collateral for the bond. The property has a market value of \$563,706 of which \$248,734 is the equity value. **(See Exhibit#2)**

Each of the co-signors assures this Honorable Court that by signing the bond, they place their integrity and trust into Mr. Gutierrez and that based upon that trust, Mr. Gutierrez will return to Court voluntarily. Our bail package includes suretors who are both financially responsible and who exercise moral suasion over the Defendant to ensure his continued presence at trial.

The aforementioned proposed signatories will all be present at the bail package hearing before Honorable Kenneth M. Karas on August 9, 2007 at 4:30PM. Defendant maintains a strong tie with each of the above proposed suretors. Furthermore, each of the aforementioned proposed suretors maintains regular contact with Carlos Gutierrez.

Based on the aforementioned facts and in line with the law governing bail applications, we respectfully request the Court use its discretion and grant our second request for bond for Carlos Alberto Gutierrez.

In addition to the amount of money secured on behalf of Carlos Gutierrez's bail package, including the home and four (4) suretors who are willing to sign on behalf of Carlos Gutierrez to secure his bail, we also propose \$10,000 cash be put forth. Each of these signatories has an extremely close relationship with Carlos Gutierrez, most if not all of these relationships are over forty (40) years in length. Each of these proposed suretors possess moral suasion over Carlos Gutierrez. They have solid work histories with substantial salaries.

Moreover, Carlos Gutierrez, himself, is a solid candidate for this type of bond. He is a Lawful Permanent Resident and he has always been gainfully employed. He is highly unlikely

to abscond. Moreover, this is Defendant's first arrest ever. Furthermore, we are proposing that he be outfitted with an ankle device and home detention to further secure his appearance.

The allegations charged against Mr. Gutierrez are extremely harsh and the crime charged is indeed extremely serious. However, we believe that justice may be served accordingly even if Mr. Gutierrez is granted bail in this matter.

#### **ADDRESS UPON RELEASE**

When released, defendant will reside at the home he shares with his brother, Jose I. Gutierrez, located at 226 Main Street, Hackensack, New Jersey 07601.

#### **CONCLUSION**

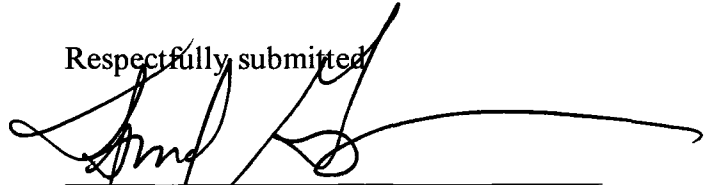
Based on the aforementioned facts, case law, and accompanying exhibits, we respectfully propose a \$350,000.00 personal recognizance bond which includes the amount of equity held in the property located at 307 First Place, Bogota, New Jersey, \$10,000 cash and the amount of equity held by the sureties, secured by the four (4) individuals listed above.

We further respectfully propose that: defendant be subject to electronic monitoring by Pre-Trial Services through the use of a non-removable electronic bracelet attached to defendant's wrist or ankle; that the defendant personally establish telephonic communication with Pre-Trial Services on a daily basis, including weekends and holidays; and that defendant relinquish his passport and other travel documents to the Clerk of this Court.



Dated: August 8, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ismael Gonzalez', is written over a horizontal line. The signature is stylized with a large, sweeping flourish extending to the right.

ISMAEL GONZALEZ, ESQ. (IG-9920)  
ISMAEL GONZALEZ & ASSOCIATES  
53 West 36<sup>th</sup> Street, Suite 605  
New York, New York 10018  
(212) 465-1500